

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR TAYLOR,

Petitioner,

v.

WARDEN OF CALIFORNIA MEDICAL
FACILITY, et al.,

Respondents.

No. 2:24-cv-01675 DAD CSK P

FINDINGS AND RECOMMENDATIONS

I. INTRODUCTION

Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2017 conviction for attempted murder and two counts each of domestic violence and assault with a deadly weapon. (ECF No. 8.) Pending before the Court is respondent's motion to dismiss on the grounds that petitioner's claims are barred by the statute of limitations and not exhausted. (ECF No. 22.) For the following reasons, this Court recommends that respondent's motion to dismiss be granted.

II. EXHAUSTION

A. Legal Standard

Under 28 U.S.C. § 2254(b), the exhaustion of available state remedies is required before claims can be granted by the federal court in a habeas corpus case. See Rose v. Lundy, 455 U.S.

509, 515-16 (1982). The exhaustion doctrine is based on a policy of federal and state comity, designed to give state courts the initial opportunity to correct alleged constitutional deprivations. See Picard v. Connor, 404 U.S. 270, 275 (1971); see also Rose, 455 U.S. at 518. “A petitioner may satisfy the exhaustion requirement in two ways: (1) by providing the highest state court with an opportunity to rule on the merits of the claim ...; or (2) by showing that at the time the petitioner files the habeas petition in federal court no state remedies are still available to the petitioner and the petitioner had not deliberately by-passed the state remedies.” Batchelor v. Cupp, 693 F.2d 859, 862 (9th Cir. 1982) (citations omitted).

B. Analysis

Petitioner’s habeas corpus petition raises four claims. (ECF No. 8.) In claim one, petitioner alleges reprisal and retaliation. (Id. at 4.) In support of claim one, petitioner alleges that when the trial judge heard that petitioner “file[d] on him it was all bad.” (Id.) In claim two, petitioner alleges that the prosecutor was racist. (Id.) Claim two may also be raising a prosecutorial misconduct claim. (Id.) In claim three, petitioner appears to raise a claim of ineffective assistance of counsel. (Id. at 5.) In claim four, petitioner alleges, “Self defense under the prima facie case law...” (Id.) In support of claim four, petitioner alleges, “I am overly penalized cause I was protecting myself and [trained] by government United States Marine Corps...no life threaten injuries...only an unjust act a wrongful reprisal...” (Id.)

1. Petition for Review

In the petition for review filed in the California Supreme Court, petitioner raised five claims. Resp. Lod. Doc. 3 (ECF No. 21-3). In claim one, petitioner argued that the trial court erred in admitting evidence of a prior incident of domestic abuse committed 22 years before the current offense. Id. at pp. 10-16. In claim two, petitioner argued that the trial court erred in denying petitioner’s motion to introduce evidence of the victim’s character for violence. Id. at pp. 16-20. In claim three, petitioner argued that the trial court erred in finding a 9-1-1 call about the alleged crowbar incident admissible as a spontaneous declaration exception to the hearsay rule. Id. at pp. 20-23. In claim four, petitioner argued there was insufficient evidence to support his attempted murder conviction because the evidence failed to establish that he acted with the

1 intent to kill. Id. at pp. 23-29. In claim five, petitioner argued that the trial court imposed a
2 restitution fine and assessed fees without holding a hearing to determine petitioner's ability to
3 pay. Id. at pp. 29-30.¹ On May 26, 2021, the California Supreme Court denied the petition for
4 review without comment or citation. Resp. Lod. Doc. 4 (ECF No 21-4).

5 The petition for review did not raise claims one, two or three raised in the instant petition.
6 Whether the petition for review raised claim four requires further discussion. In the petition for
7 review, petitioner argued that there was insufficient evidence to support his attempted murder
8 conviction because the evidence failed to establish that he acted with the intent to kill. Resp. Lod.
9 Doc. 3 at 23. In support of this claim, petitioner argued that the evidence failed to establish the
10 extent of the victim's injuries. Id. at pp. 24-25. Petitioner argued that sufficient evidence of an
11 intent to kill in a case where the victim was stabbed required more than the mere fact that the
12 victim suffered serious stab wounds. Id. at pp. 26-28. Petitioner argued that evidence related to
13 the facts and circumstances surrounding the stabbing did not constitute substantial evidence
14 supporting the finding that petitioner intended to kill. Id. at pp. 28-29. Petitioner argued that
15 although the victim was stabbed multiple times, many of the wounds appeared to be superficial
16 ones, and there was no evidence that petitioner stabbed any of the victim's vital organs or that she
17 suffered any life-threatening injuries. Id. at p. 28.

18 When this Court screened the petition, it found that in claim four petitioner appeared to
19 argue insufficient evidence to support his attempted murder conviction based on self-defense.
20 (ECF No. 15 at 2.) To the extent petitioner raises this claim, this Court finds that this claim was
21 not raised in the petition for review. However, after carefully reviewing claim four and the
22 petition for review, this Court finds that claim four also argues insufficient evidence to support
23 petitioner's attempted murder conviction based on the victim's alleged superficial injuries, as
24 argued in the petition for review. Petitioner's reference in claim four to "no life threatening
25 injuries" refers to the arguments raised in the petition for review in support of the claim alleging
26 insufficient evidence of attempted murder. Accordingly, this Court finds that claim four is

27 ¹ Petitioner raised these five claims in the direct appeal filed in the California Court of Appeal.
28 Resp. Lod. Doc. 2 (ECF No. 21-2).

1 exhausted to the extent it argues insufficient evidence to support petitioner's attempted murder
2 conviction on the grounds that the victim did not suffer life threatening injuries.

3 2. Habeas Corpus Petitions Filed In State Court

4 Petitioner filed three habeas corpus petitions in state court raising claims challenging his
5 2017 conviction: one habeas corpus petition filed in the Sacramento County Superior Court and
6 two habeas corpus petitions filed in the California Court of Appeal. Resp. Lod. Docs. 5, 7, 9
7 (ECF Nos. 21-5, 21-7, 21-9). To the extent these petitions raised any of the claims raised in the
8 instant petition, petitioner failed to exhaust these claims because petitioner did not go on to raise
9 these claims before the California Supreme Court.

10 Petitioner filed three habeas corpus petitions in the California Supreme Court but they did
11 not raise any of the claims raised in the instant action: case nos. S262788, S269391, and S275958.
12 In case no. S262788, filed June 15, 2020, petitioner identified the respondent as "Black Lives
13 Matter" and described his grounds for relief as, "Bias and racism of the law for Blacks and
14 Browns that has destroyed our family to[o] much time." Resp. Lod. Doc. 11 at pp. 1, 4. (ECF No.
15 21-11). Petitioner described the supporting facts as "priors and enhancements on old cases way
16 before the law of three strikes." Id. Petitioner argued that the three strikes law was enacted in
17 1994, so "tell me why they charge a person twice on old cases that time and parole has been
18 completed and successful?" Id. at p. 7. Petitioner argued that the Three Strikes Law was being
19 applied to Black and Brown people in an unfair manner. Id. at p. 8.

20 In case no. S269391, filed June 14, 2021, petitioner challenged the validity of three prior
21 convictions: case no. 61444 from 1981, case no. 113663 from 1992 and case no. 86743 from
22 1989. Resp. Lod. Doc. 12 at 2 (ECF No. 21-12). These prior convictions may have been charged
23 as strikes in petitioner's 2017 conviction challenged in the instant action. Evidence regarding one
24 of the prior convictions challenged in case no. S269391 may also have been admitted at
25 petitioner's 2017 trial as propensity evidence pursuant to California Penal Code § 1109.
26 However, in case no. S269391, petitioner did not raise any claims challenging his 2017
27 conviction.

28 In case no. S275958, filed August 12, 2022, petitioner raised claims alleging exposure to

1 toxic drinking water, that petitioner was going blind and that the California Department of
2 Corrections and Rehabilitation was creating a death sentence. Resp. Lod. Doc. 21 (ECF No. 21-
3 13).

4 **3. Conclusion**

5 For the reasons discussed above, this Court finds that only claim four alleging insufficient
6 evidence to support petitioner's attempted murder conviction based on the victim's alleged lack
7 of life-threatening injuries is exhausted.

8 **III. STATUTE OF LIMITATIONS**

9 **A. Legal Standards**

10 **1. Statute of Limitations**

11 Section 2244(d)(1) of Title 28 of the United States Code contains a one-year statute of
12 limitations for filing a habeas petition in federal court. The one-year clock commences from
13 several alternative triggering dates which are described as:

14 (A) the date on which the judgment became final by the conclusion
15 of direct review or the expiration of the time for seeking such review;

16 (B) the date on which the impediment to filing ... is removed, if the
applicant was prevented from filing by such State action;

17 (C) the date on which the constitutional right asserted was initially
18 recognized by the Supreme Court ... and made retroactively
applicable to cases on collateral review; or

19 (D) the date on which the factual predicate of the claim or claims
20 presented could have been discovered through the exercise of due
diligence.

21 28 U.S.C. § 2244(d)(1).

22 **2. Statutory Tolling**

23 The "time during which a properly filed application for State post-conviction or other
24 collateral review with respect to the pertinent judgment or claim is pending shall not be counted
25 toward" the one-year limitation period. 28 U.S.C. § 2244(d)(2). Statutory tolling is available
26 while a prisoner pursues a full round of habeas relief in state court. See Banjo v. Ayers, 614 F.3d
27 964, 968 (9th Cir. 2010). "Post-conviction review is 'pending,' and thus the statute of limitations
28 tolls, while a prisoner is pursuing a full round of habeas relief in state court." Id. "The period in

1 which a habeas petition is pending includes the time between the lower court’s adverse ruling and
 2 the prisoner’s filing of a notice of appeal, so long as the filing comports with the state law
 3 timeliness requirements.” Id. “Under California’s unusual system of independent collateral
 4 review, a prisoner seeks review of a lower court’s denial of relief by filing an original petition for
 5 habeas corpus in the reviewing court.” Id. “The period between a California lower court’s denial
 6 of review and the filing of an original petition in a higher court is tolled—because it is part of a
 7 single round of habeas relief—so long as the filing is timely under California law.” Id.

8 3. Equitable Tolling

9 A court may equitably toll the statute of limitations if petitioner demonstrates: (1) the
 10 existence of an “extraordinary circumstance” that prevented him from timely filing, and (2) that
 11 notwithstanding such an impediment he was diligently pursuing relief. See Holland v. Florida,
 12 560 U.S. 631, 649 (2010). The Supreme Court has further clarified that the diligence required to
 13 establish an entitlement to equitable tolling is not “maximum feasible diligence” but rather only
 14 “reasonable diligence.” Holland, 560 U.S. at 653 (internal quotation marks and citations
 15 omitted). Additionally, petitioner must demonstrate the causal relationship between the
 16 extraordinary circumstance and the untimely filing. See Spitsyn v. Moore, 345 F.3d 796, 799
 17 (9th Cir. 2003). With respect to equitable tolling, “the statute-of-limitations clock stops running
 18 when extraordinary circumstances first arise, but the clock resumes running once the
 19 extraordinary circumstances have ended or when the petitioner ceases to exercise reasonable
 20 diligence, whichever occurs earlier.” Luna v. Kernan, 784 F.3d 640, 651 (9th Cir. 2015) (citing
 21 Gibbs v. Legrand, 767 F.3d 879, 891-92 (9th Cir. 2014)).

22 **B. Analysis**

23 1. Calculating Statute of Limitations

24 Pursuant to the mailbox rule, petitioner opened this action by filing a civil rights
 25 complaint on June 10, 2024. (ECF No. 1.) On June 17, 2024, this Court construed this action as
 26 a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 because petitioner’s complaint
 27 raised claims challenging the validity of his conviction and requested that he be resentenced.
 28 (ECF No. 4.) This Court granted petitioner thirty days to file a petition for writ of habeas corpus.

(Id.) Pursuant to the mailbox rule, petitioner filed the operative habeas corpus petition on July 10, 2024. (ECF No. 8.) Because petitioner's complaint raised claims challenging the validity of petitioner's conviction, based on which this Court construed this action as a petition for writ of habeas corpus, this Court considers whether this action is timely based on the June 10, 2024 filing date of the complaint.

This Court finds that the statute of limitations in this action is calculated pursuant to 28 U.S.C. § 2244(d)(1)(A), i.e., one year from the date petitioner's conviction became final. In calculating the statute of limitations, this Court first finds that the modification of petitioner's judgment by the California Court of Appeal does not impact the calculation of the statute of limitations. The California Court of Appeal summarized petitioner's conviction and sentence as follows:

As to the crowbar attack, the jury found defendant guilty of inflicting corporal injury on a cohabitant and found he had personally used a deadly weapon. It also found him guilty of assault with a deadly weapon. As to both counts, the jury found a personal infliction of great bodily enhancement was not true.

As to the stabbing [which occurred three months later], the jury found defendant guilty of attempted murder, finding he personally used a deadly weapon, and inflicted great bodily injury. It also found him guilty of inflicting corporal injury resulting in traumatic condition on a cohabitant, finding he personally used a deadly weapon and inflicted great bodily injury. It also found him guilty of assault with a deadly weapon with a finding of personal infliction of great bodily injury.

The jury also found that defendant had suffered three prior strike convictions: voluntary manslaughter, corporal injury, and battery with serious bodily injury.

The trial court imposed an aggregate indeterminate term of 52 years to life along with a determinative term of seven years, calculated as follows: 27 years to life for attempted murder (the upper term tripled for the strikes), along with a five-year great bodily enhancement, and a one-year deadly weapon use enhancement; and 25 years to life for corporal injury, along with a one-year deadly weapon use enhancement. Terms on other counts were imposed and stayed pursuant to section 654.

Resp. Lod. Doc. 2 at pp. 7-8.

On March 1, 2021, the California Court of Appeal modified the judgment to strike the finding of a prior strike based on petitioner's 1989 conviction for battery with serious bodily

1 injury and remanded the matter to allow the prosecution to decide whether it wished to establish
2 that strike. Id. at pp. 24-25. The California Court of Appeal affirmed petitioner's conviction in
3 all other respects. Id. In the motion to dismiss, respondent states that there is no indication that
4 the prosecution sought to reestablish the prior conviction that was struck on appeal. (ECF No. 22
5 at 2 n. 1.) This Court reviewed the docket in petitioner's case in the Sacramento County Superior
6 Court, case no. 14F07333, and finds there is no indication in the docket that the prosecution
7 sought to reestablish the prior conviction struck on appeal.² This Court also observes that the
8 striking of petitioner's 1989 battery conviction as a strike by the California Court of Appeal had
9 no impact on petitioner's sentence because, as observed by the California Court of Appeal, "two
10 prior strikes still suffice to render the current offenses third strikes." Resp. Lod. Doc. 2 at p. 24.
11 The abstract of judgment was not amended as a result of the order by the California Court of
12 Appeal. Resp. Lod. Doc. 1. For these reasons, the order by the California Court of Appeal
13 striking one of petitioner's strike convictions has no impact on the calculation of the statute of
14 limitations. The circumstances of the striking of petitioner's prior conviction are different from
15 cases where the appellate court remanded for resentencing. See Burton v. Stewart, 549 U.S. 147,
16 156 (2007) (where state appellate court remands for resentencing, the limitations period does not
17 begin to run until both the conviction and resentencing are final on direct review); Robinson v.
18 Pollard, 2021 WL 3511037, at *4 (C.D. Cal. Aug. 4, 2021) ("Here, because the court entered an
19 amended abstract of judgment in conjunction with Petitioner's resentencing, Petitioner's
20 conviction did not become final for the purposes of AEDPA until the amended judgment became
21 final."), report and recommendation adopted, 2021 WL 3511038 (C.D. Cal. Aug. 10, 2021).

22 On May 26, 2021, in case no. S268163, the California Supreme Court denied petitioner's
23 petition for review. Resp. Lod. Doc. 4 (ECF No. 21-4). The docket from the California Supreme
24 Court in case no. S26813 reflects that petitioner did not file a petition for writ of certiorari.³

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26 ² This Court takes judicial notice of the docket in Sacramento County Superior Court case no.
27 14F07333. See Fed. R. Evid. 201; Porter v. Ollison, 620 F.3d 952, 954-55 (9th Cir. 2010) (taking
judicial notice of state court dockets).

28 ³ This Court takes judicial notice of the docket in California Supreme Court case no. S26813.
See Fed. R. Evid. 201; Porter, 620 F.3d at 954-55.

1 Therefore, petitioner's conviction became final ninety days later on August 24, 2021 when the
2 time allotted for filing a petition for writ of certiorari expired. See Miranda v. Castro, 292 F.3d
3 1063, 1065 (2002) (holding that where petitioner did not file a petition for certiorari, his
4 conviction became final ninety days after the California Supreme Court denied review). The one-
5 year statute of limitations commenced running on the following day, August 25, 2021. See
6 Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). Therefore, petitioner had until August
7 25, 2022 to file a timely federal petition. See 28 U.S.C. § 2244(d)(1)(A). The instant action, filed
8 June 10, 2024, is not timely unless petitioner is entitled to statutory or equitable tolling.

9 2. Statutory Tolling

10 At the outset, this Court observes that there is no tolling between the finality of direct
11 review on August 24, 2021 and the filing of the first state habeas corpus petition on May 30, 2022
12 as no state court petition was pending. See e.g., Lawrence v. Florida, 549 U.S. 327, 330 (2007);
13 Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010) ("The period between when direct review
14 becomes final and the filing of a state habeas petition is not tolled[.]").

15 This Court next considers whether petitioner is entitled to statutory tolling for the habeas
16 corpus petitions filed by petitioner in state court. Pursuant to the mailbox rule, on May 30, 2022,
17 petitioner filed a petition for writ of habeas corpus in the Sacramento County Superior Court
18 challenging his 2017 conviction. Resp. Lod. Doc. 5 (ECF No. 21-5). On June 24, 2022, the
19 Sacramento County Superior Court denied this petition. Resp. Lod. Doc. 6 (ECF No. 21-6).
20 Pursuant to the mailbox rule, on August 2, 2022, petitioner filed his first petition for writ of
21 habeas corpus in the California Court of Appeal challenging his 2017 conviction. Resp. Lod.
22 Doc. 7 (ECF No. 21-7). On September 8, 2022, the California Court of Appeal denied this
23 petition. Resp. Lod. Doc. 8 (ECF No. 21-8). The docket sheet from the California Court of
24 Appeal provided by respondent reflecting the denial of this petition states, "Petition summarily
25 denied by order." Id.

26 This Court finds, and respondent agrees, that petitioner is entitled to statutory tolling for
27 the time his first two habeas corpus petitions filed in state court were pending, i.e., from May 30,
28 2022 to September 8, 2022. See Banjo, 614 F.3d at 968 (statutory tolling available while a

prisoner pursues a full round of habeas relief). Accordingly, petitioner is entitled to 102 days of statutory tolling for this time period, extending the limitations period to December 5, 2022.

Pursuant to the mailbox rule, on February 11, 2023 petitioner filed a second habeas corpus petition in the California Court of Appeal which appears to raise some claims challenging petitioner's 2017 conviction. Resp. Lod. Doc. 9 (ECF No. 21-9). This Court finds that petitioner is not entitled to statutory tolling for the second habeas corpus petition filed in the California Court of Appeal because this petition was filed after the statute of limitations ran on December 5, 2022. A petition for state post-conviction or other collateral review filed after the conclusion of the limitations period cannot reinitiate the limitations period. See Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003) (“[S]ection 2244(d) does not permit the reinitiation of the limitations period that has ended before the state petition was filed.”).⁴

This Court also finds that petitioner is not entitled to statutory tolling for any of the three habeas corpus petitions he filed in the California Supreme Court. “A habeas petitioner is entitled to statutory tolling of AEDPA’s one-year statute of limitations while a ‘properly filed application for State post-conviction or other collateral review with respect to the *pertinent* judgment or claim is pending.’” Nedds v. Calderon, 678 F.3d 777, 780 (9th Cir. 2012) (quoting 28 U.S.C. § 2244(d)(2)) (emphasis added). As discussed above, none of the petitions filed by petitioner in the California Supreme Court raised claims challenging petitioner’s 2017 conviction.⁵ For this

⁴ Respondent also argues that petitioner is not entitled to statutory tolling for the second habeas corpus petition filed in the California Court of Appeal because the state appellate court denied this petition by order, citing In re Clark, 5 Cal.4th 750, 767-68 (1993). (ECF No. 22 at 5 n.4.) Citing Pace v. DiGuglielmo, 544 U.S. 408, 414-15 (2005), respondent argues that the citation to Clark signals that the second habeas corpus petition filed in the California Court of Appeal was untimely and, thus, not properly filed. (Id.). This Court need not reach this issue because the second habeas corpus petition filed in the California Court of Appeal was filed after the statute of limitations ran. This Court also observes that the docket sheet provided by respondent showing the denial of this petition by the California Court of Appeal does not reflect that the petition was denied by citation to Clark. Resp. Lod. Doc. 10 (ECF No. 21-10).

⁵ In the first habeas corpus petition filed in the California Supreme Court, petitioner argued that the Three Strikes Law discriminated against Black and Brown people. Resp. Lod. Doc. 11. In this petition, petitioner possibly referenced prior convictions used to enhance his sentence in the 2017 conviction. This Court does not find that the possible reference to petitioner’s prior convictions used to enhance his sentence in the 2017 conviction raised a claim challenging his 2017 conviction. For this reason, petitioner is not entitled to statutory tolling as to his first habeas

1 reason, petitioner is not entitled to statutory tolling based on the habeas corpus petitions he filed
2 in the California Supreme Court.

3 With statutory tolling, the statute of limitations ran on December 5, 2022. This action,
4 filed on June 10, 2024, over 18 months later, is not timely unless petitioner is entitled to equitable
5 tolling.

6 3. Equitable Tolling

7 In his opposition, petitioner makes no argument in support of equitable tolling and this
8 Court can find no grounds for equitable tolling in the record. (ECF No. 27.) Accordingly, this
9 Court finds that petitioner is not entitled to equitable tolling.

10 4. Conclusion

11 For the reasons discussed above, this Court finds that petitioner's claims are barred by the
12 statute of limitations.

13 IV. CONCLUSION

14 This Court recommends that respondent's motion to dismiss be granted on the grounds
15 that this action is barred by the statute of limitations. Because this Court finds that the claims are
16 time barred, this Court need not consider whether this action should be stayed so that petitioner
17 may exhaust his unexhausted claims.

18 Accordingly, IT IS HEREBY RECOMMENDED that respondent's motion to dismiss
19 (ECF No. 22) be granted on the grounds that petitioner's claims are barred by the statute of
20 limitations.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
23 after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned
25 "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner

26 _____
27 corpus petition filed in the California Supreme Court. Cf. Arrendondo v. Neven, 763 F.3d 1122,
28 1138 (9th Cir. 2014) ("To fairly present a claim [in order to exhaust state court remedies], a state
prisoner must present to the state courts both the operative facts and the federal legal theories that
animate the claim.").

1 may address whether a certificate of appealability should issue in the event he files an appeal of
2 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
3 court must issue or deny a certificate of appealability when it enters a final order adverse to the
4 applicant). A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant
5 has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3).
6 Any response to the objections shall be served and filed within fourteen days after service of the
7 objections. The parties are advised that failure to file objections within the specified time may
8 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
9 1991).

10
11 Dated: August 13, 2025



CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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